

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

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| UNITED STATES OF AMERICA, | : | CRIMINAL ACTION NO. |
| | : | |
| Plaintiff, | : | 2:14-cr-00116-01 |
| | : | |
| -vs- | : | |
| | : | |
| CHADWICK J. LUSK, | : | |
| | : | |
| Defendant. | : | |
| | | x |

**TRANSCRIPT OF PLEA HEARING
BEFORE THE HONORABLE THOMAS E. JOHNSTON,
UNITED STATES DISTRICT JUDGE
MONDAY, JULY 21, 2014**

APPEARANCES:

FOR THE PLAINTIFF: AUSA MEREDITH GEORGE THOMAS
Assistant United States Attorney
U.S. Attorney's Office
P.O. Box 1713
Charleston, WV 25326-1713

FOR THE DEFENDANT: THOMAS W. SMITH, ESQ.
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Proceedings recorded by mechanical stenography, transcript
produced by computer.

CATHERINE L. SCHUTTE-STANT, RPR, RMR
Federal Official Court Reporter
300 Virginia Street East, Room 6009
Charleston, WV 25301
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1 P-R-O-C-E-E-D-I-N-G-S 10:30 a.m.

2 THE CLERK: All rise.

3 THE COURTROOM DEPUTY CLERK: The matter before the
4 Court is the *United States versus Chadwick Lusk*. Criminal
5 Action Number 2:14-cr-00116, scheduled for a plea hearing.

6 THE COURT: Good morning. Will counsel please
7 note their appearances?

8 MS. THOMAS: Meredith George Thomas on behalf of
9 the United States.

10 MR. SMITH: Thomas Smith on behalf of Mr. Lusk,
11 who is present, Your Honor.

12 THE COURT: Good morning. Mr. Lusk, will you
13 please stand, and I'll ask the deputy clerk to administer an
14 oath to you at this time.

15 **CHADWICK J. LUSK, THE DEFENDANT, WAS SWORN**

16 THE COURT: You may be seated.

17 **EXAMINATION**

18 **BY THE COURT:**

19 **Q.** Mr. Lusk, do you understand that you're now under oath
20 and you must tell the truth; and if you testify falsely, you
21 may face prosecution for perjury or for making a false
22 statement?

23 **A.** Yes, sir.

24 **Q.** Throughout the course of this hearing, I'm going to be
25 asking you a number of questions, and I want to make sure

1 that you and I are communicating clearly, so that if at any
2 time you don't understand the question that I ask or
3 anything else that occurs in this hearing, I want you to
4 feel free to speak up and seek clarification.

5 Also, if at any time you need to confer with your
6 attorney, I'll be pleased to pause the proceedings to allow
7 you to do so. Do you understand all that?

8 **A.** Yes, sir.

9 **Q.** All right. Let me begin by asking you, how old are
10 you?

11 **A.** 32.

12 **Q.** And can you briefly describe your educational
13 background?

14 **A.** I have an accounting degree from Marshall University,
15 with a minor in economics, and a master's from the
16 University of Charleston.

17 **Q.** And just for the record, can you read and write and
18 understand the English language?

19 **A.** Yes, sir.

20 **Q.** Can you briefly describe your work experience?

21 **A.** I have -- I did an internship in college, accounting
22 internship. Out of college, I worked as accounts payable
23 and payroll clerk for Arch Coal. From there, I was an
24 accounting technician, and then a purchasing manager, and a
25 purchasing warehouse manager.

1 **Q.** Have you taken any medicine or drugs or have you
2 consumed any alcoholic beverages in the last 24 hours?

3 **A.** No, sir.

4 **Q.** Including prescription drugs?

5 **A.** Blood pressure pills.

6 **Q.** Just that?

7 **A.** Yes, sir.

8 **Q.** And you took that this morning?

9 **A.** No, sir.

10 **Q.** Last night?

11 **A.** Last night.

12 **Q.** All right. And what was the name of that drug?

13 **A.** Exforge.

14 **Q.** And to the best of your knowledge as you sit here
15 today, are you suffering from any side-effects from that
16 medication that would in any way affect your ability to
17 fully participate in this hearing today?

18 **A.** No, sir.

19 **Q.** Have you ever been treated for any mental illness or
20 addiction to drugs of any kind?

21 **A.** No, sir.

22 **Q.** Do you know where you are and why you're here today?

23 **A.** Yes, sir.

24 **Q.** Do you have any hearing impairment or other disability
25 which would prevent you from fully participating in this

1 hearing today?

2 **A.** No, sir.

3 THE COURT: Mr. Smith, do you have any reason to
4 question the competency of your client?

5 MR. SMITH: I do not, Your Honor.

6 THE COURT: All right. I believe the original
7 plea agreement has been provided to me.

8 Ms. Thomas, are there any changes in the plea
9 agreement?

10 MS. THOMAS: No, Your Honor.

11 THE COURT: All right. Very good.

12 BY THE COURT:

13 **Q.** Mr. Lusk, is that your signature that appears on the
14 eighth and final page of the plea agreement?

15 **A.** Yes, sir.

16 **Q.** And are those your initials that appear on those pages
17 of the plea agreement?

18 **A.** Yes, sir.

19 **Q.** And have you read and reviewed with your attorney each
20 of the 16 paragraphs of the plea agreement and the exhibit
21 attached to it?

22 **A.** Yes, sir.

23 **Q.** Or attached exhibits, I should say. You've reviewed
24 the exhibits?

25 **A.** Yes, sir.

1 **Q.** All right. Do you wish to have the various terms of
2 the plea agreement orally stated on the record, or do you
3 believe that that's unnecessary?

4 **A.** That's unnecessary, sir.

5 **Q.** And do you understand and agree with all of the terms
6 and provisions contained in the plea agreement?

7 **A.** Yes, sir.

8 THE COURT: Mr. Smith, have you reviewed each of
9 the 16 paragraphs of the plea agreement and its two exhibits
10 with your client?

11 MR. SMITH: Yes, I have, Your Honor.

12 THE COURT: And, Mr. Smith, and, Ms. Thomas, is
13 there any reason why either of you believe that the various
14 terms of the plea agreement should be orally stated on the
15 record?

16 MS. THOMAS: No, Your Honor.

17 MR. SMITH: No, Your Honor.

18 BY THE COURT:

19 **Q.** All right, very well.

20 Mr. Lusk, nonetheless, I want to talk with you
21 regarding certain provisions of the plea agreement,
22 beginning with Section 5, which starts on page 2 and runs
23 over onto page 3; it's entitled: "Restitution," and it
24 recites that you agree that you owe restitution to Arch Coal
25 in the amount of \$230,000 plus interest.

1 Do you understand that?

2 **A.** Yes, sir.

3 **Q.** And specifically I want to refer you to Subsection
4 5(e). That's an appeal waiver. And do you understand that
5 a waiver is a legal term that means you're giving something
6 up?

7 **A.** Yes, sir.

8 **Q.** All right. So in Section 5(e), you're waiving your
9 right to appeal any order of restitution entered by this
10 Court, unless the amount of the restitution ordered is
11 greater than that set forth in this agreement. Do you
12 understand that?

13 **A.** Yes, sir.

14 **Q.** All right. Let me next refer you to Section 10 of the
15 plea agreement, which begins on page 4 and runs over onto
16 page 5, and it is entitled, "Stipulation of Facts and Waiver
17 of Federal Rule of Evidence 410."

18 Now, this section relates to a couple different
19 matters; the first of which is the Stipulation of Facts
20 which is attached to the plea agreement as Exhibit B. And I
21 want to turn your attention to that document now. That's a
22 two-page document. And on the second page, is that your
23 signature which appears there?

24 **A.** Yes, sir.

25 **Q.** And have you read the Stipulation of Facts?

1 **A.** Yes, sir.

2 **Q.** And do you agree that all of the facts contained in the
3 Stipulation of Facts are true?

4 **A.** Yes, Your Honor.

5 **Q.** You agree that everything in the stipulation is true?

6 **A.** The only stipulation that I wasn't completely with --
7 but, I mean, I consent to everything in it, yes.

8 MR. SMITH: Your Honor, if I may?

9 THE COURT: You may.

10 MR. SMITH: He is referring to, on page 2, the
11 third unnumbered paragraph as to the overall amount, and his
12 hesitation -- and we've discussed this with the Government
13 -- was that amount does not seem correct to us, but we're
14 not contesting it. Unequivocally not contesting it.

15 THE COURT: And that's an estimate of the total
16 kickbacks, an estimate made by Mr. Roeher?

17 MR. SMITH: Yes, Your Honor.

18 THE COURT: All right.

19 BY THE COURT:

20 **Q.** Well, with that clarification then -- so, other than
21 not being so sure about that number, you agree that
22 everything else in the stipulation is true?

23 **A.** Yes, sir.

24 **Q.** All right. A little bit about what will be happening
25 from here on out. The probation officer will be preparing a

1 presentence report. That report will contain detailed
2 recommended factual findings regarding this offense and your
3 background, among other things. Ultimately, at sentencing,
4 I will make factual findings based at least in part on the
5 recommendations contained in the presentence report.

6 Now, you and the Government have reached an agreement
7 regarding certain facts contained in this Stipulation, but I
8 want you to understand that in this process neither the
9 probation officer nor this Court are bound by that
10 Stipulation of Facts. Do you understand that?

11 **A.** Yes, sir.

12 **Q.** Do you further understand that if I make findings of
13 fact at sentencing that are different from or inconsistent
14 with the facts contained in this stipulation, you will still
15 be bound by your guilty plea and would have no right to
16 withdraw it? Do you understand that?

17 **A.** Yes, sir.

18 **Q.** All right. The other matter addressed in Section 10 is
19 a waiver of Federal Rule of Evidence 410. Now, Rule 410
20 generally provides that information or documents regarding
21 plea negotiation and this Stipulation of Facts which fall
22 into that category is generally not admissible at trial. In
23 other words, the Government can't use that sort of thing
24 against you at trial under normal circumstances. However,
25 under this waiver, if you withdraw from the plea agreement,

1 or it's no longer any good as a result of your violation of
2 one or more of its terms and there's a subsequent trial,
3 then the Government would be allowed under this waiver to
4 present the Stipulation of Facts in its case-in-chief or for
5 other purposes at that trial. Do you understand that
6 waiver?

7 **A.** Yes, sir.

8 **Q.** All right. Next I want to refer you to Section 11 of
9 the plea agreement, which is entitled "Agreement on
10 Sentencing Guidelines." It's on page 5.

11 Now, before we get into this, I want to ask you: Has
12 your attorney talked with you about the federal sentencing
13 guidelines and how they generally work?

14 **A.** Yes, sir.

15 **Q.** And has he shown you that chart in the back of the
16 book?

17 **A.** Yes, sir.

18 **Q.** All right. Well, working from that chart, I want to
19 have a similar discussion with you. If you'll recall from
20 the chart, on the left side of the page, there's a series of
21 numbers that run from low to high as you go down the page.
22 Those are the offense levels. The offense level is
23 calculated by starting at the base offense level or a
24 starting point, and that can be adjusted upward or downward,
25 depending upon the facts and circumstances of the case, to

1 arrive at an adjusted offense level. Then consideration is
2 generally given to a reduction for acceptance of
3 responsibility.

4 Has your attorney talked with you about that?

5 **A.** Yes, sir.

6 **Q.** All right. Then you generally arrive at a total
7 offense level. Then you go up to the top of the chart and
8 there are six criminal history categories, and you would
9 fall into one of them, depending on the number of points, if
10 any, assigned to any prior convictions that you may have.

11 Then you combine the criminal history category and the
12 total offense level to arrive at a point in the chart that
13 gives a range of months of imprisonment. And in certain
14 parts of the chart there are certain alternatives available
15 to imprisonment.

16 Do you understand all this so far?

17 **A.** Yes, sir.

18 **Q.** Once we arrive at a guideline range, I can sentence you
19 within that range, or I'm permitted to sentence you outside
20 of that range, under certain circumstances, above or below
21 it. If I do that, based on factors identified in the
22 guidelines, that's generally known as a departure. And if I
23 sentence you outside of the guideline range, again, above it
24 or below it, based on factors outside the guidelines, it's
25 generally known as a variance.

1 Has your attorney talked with you about all these
2 things about the guidelines?

3 **A.** Yes, sir.

4 **Q.** And do you believe that you understand them all?

5 **A.** Yes, sir.

6 **Q.** All right. Well, with all that in mind, then, Section
7 11 contains an agreement that you've reached with the
8 Government regarding one or more provisions of the federal
9 sentencing guidelines. Now, this is similar to the
10 Stipulation of Facts in that the probation officer in the
11 presentence report will include a recommended guideline
12 calculation, and ultimately at sentencing I will make
13 guideline findings based at least in part on the probation
14 officer's recommendations.

15 Now, so, once again, even though you've reached an
16 agreement with the Government regarding the guidelines here
17 in Section 11, I want you to understand that neither the
18 probation officer, nor this Court are bound by an agreement
19 on the guidelines. Do you understand that?

20 **A.** Yes, sir.

21 **Q.** And do you further understand that if I make guideline
22 findings at sentencing that are different from or
23 inconsistent with this agreement on the guidelines, you will
24 still be bound by your guilty plea and would have no right
25 to withdraw it? Do you understand that?

1 **A.** Yes, sir.

2 **Q.** All right. Next I want to refer you to Section 12 of
3 the plea agreement, which begins on page 5 and runs over
4 onto page 6, and is entitled "Waiver of Appeal and
5 Collateral Attack."

6 Now, this section relates to a couple different
7 procedures that I want to go over with you briefly. An
8 appeal is a procedure by which a party to a case before a
9 district court like this one, and in a criminal case it's
10 often the defendant, goes to the next level up of the court
11 system, the Court of Appeals, and argues that certain errors
12 or mistakes may have taken place in their criminal case
13 before the district court.

14 A collateral attack is similar, but it is a separate
15 civil action that a defendant may file after their criminal
16 case is over, and it's sometimes referred to as a habeas
17 corpus petition, in which they may also argue that certain
18 errors or mistakes may have taken place in their criminal
19 case before the district court.

20 Now, do you understand those two procedures, at least
21 as I've briefly described them to you?

22 **A.** Yes, sir.

23 **Q.** The other thing I want you to understand before we get
24 into Section 12 is that there are two phases to a criminal
25 case. The first phase is the part in which guilt or

1 innocence is determined. Sometimes that occurs at a trial.
2 Much more often it occurs as a result of a guilty plea like
3 what we're doing today. That first phase begins at the very
4 beginning of the case and it includes all the proceedings up
5 to and including the determination of guilt by a guilty plea
6 or otherwise.

7 The second phase of the case then, assuming guilt is
8 determined, is the penalty phase in which the penalty for
9 the crime is determined, and that usually concludes with a
10 sentencing hearing at the end of the case.

11 Do you understand the two phases of criminal cases as
12 I've described them to you?

13 **A.** Yes, sir.

14 **Q.** All right. With all that in mind then, section -- the
15 first paragraph of Section 12 contains an appeal waiver, and
16 I want to go over that with you now. Do you understand that
17 you waive the right to appeal your conviction and any
18 sentence of imprisonment, fine, or term of supervised
19 release, or the manner in which the sentence was determined
20 upon any ground whatsoever, with one exception; you may
21 appeal any sentence that is greater than the maximum penalty
22 set forth by statute? Do you understand that waiver?

23 **A.** Yes, sir.

24 **Q.** Anything about it that you don't understand?

25 **A.** No, sir.

1 **Q.** All right. Then in the second paragraph, you also
2 understand that you may not file a later civil proceeding,
3 sometimes referred to as a collateral attack or a habeas
4 corpus petition, challenging your plea, conviction, or
5 sentence?

6 **A.** Yes, sir.

7 **Q.** And finally, do you understand that you are in no event
8 waiving your right to claim ineffective assistance of
9 counsel, either upon appeal or by collateral attack?

10 **A.** Yes, sir.

11 **Q.** And finally, I want to refer you to Section 13 of the
12 plea agreement, which appears on page 6. It's entitled
13 "Waiver of FOIA and Privacy Right." And this waiver means
14 that you can't go back after this case is over and seek
15 documents or other information about the case from the
16 Government, even with a Freedom of Information Act request.
17 Do you understand that waiver?

18 **A.** Yes, sir.

19 THE COURT: Mr. Smith, have you thoroughly
20 reviewed the plea agreement with your client?

21 MR. SMITH: Yes, Your Honor.

22 THE COURT: And do you believe that he fully
23 understands the various terms and provisions of the plea
24 agreement, including the waivers and other matters that I've
25 gone over with him today?

1 MR. SMITH: Yes, Your Honor, I do.

2 BY THE COURT:

3 Q. And, Mr. Lusk, have you reviewed the plea agreement in
4 detail with your attorney?

5 A. Yes, sir.

6 Q. And do you believe that you've had adequate time to
7 discuss your case fully with your attorney?

8 A. Yes, sir.

9 Q. Has your attorney answered any questions that you've
10 had about your case?

11 A. Yes, sir.

12 THE COURT: Mr. Smith, during your representation
13 of the defendant, has he been cooperative?

14 MR. SMITH: Absolutely, Your Honor.

15 BY THE COURT:

16 Q. And, Mr. Lusk, has anything further been agreed to,
17 either orally or in writing, that is not contained in the
18 plea agreement?

19 A. No, sir.

20 THE COURT: All right. I'll order that the plea
21 agreement be filed. And I will find that the defendant
22 understands and agrees to the terms contained in the plea
23 agreement. I will defer accepting or rejecting the plea
24 agreement until sentencing, after the presentence report has
25 been received and considered.

1 BY THE COURT:

2 Q. Now, Mr. Lusk, have you received and read and reviewed
3 with your attorney the Information or charging document that
4 has been proposed in this case?

5 A. Yes, sir.

6 Q. And do you understand the charge contained in the
7 Information?

8 A. Yes, sir.

9 Q. Would you like me to read the Information to you, or
10 will you waive the reading of the Information?

11 A. I'll waive the reading, sir.

12 THE COURT: All right. As I understand it, you'll
13 be pleading guilty to a single-count Information, which
14 charges you with honest services mail fraud, in violation of
15 18, U.S.C., Section 1341 and 1346.

16 Now, I note that Section 2 is charged, but, it appears,
17 based on what I understand the facts to be in this case,
18 that Mr. Lusk is charged as a principal; is that correct?

19 MS. THOMAS: Yes, Your Honor.

20 MR. SMITH: Yes, Your Honor.

21 THE COURT: All right. So I'm going to go ahead
22 and dispense with the Section 2 elements and the definitions
23 if there's no objection.

24 BY THE COURT:

25 Q. All right. But, nonetheless, I want to go over these

1 statutes with you and the charge in just a little bit more
2 detail.

3 18, U.S.C., Section 1341 provides, in pertinent part
4 that: Whoever, having devised or intending to devise any
5 scheme or artifice to defraud, or for obtaining money or
6 property by means of false or fraudulent pretenses,
7 representations, or promises, for the purposes of executing
8 such scheme or artifice or attempting so to do, knowingly
9 causes to be delivered by mail, according to the direction
10 thereon, any such matter or thing, shall be guilty of a
11 crime against the United States.

12 Let me just take a look at one thing.

13 18, U.S.C., Section 1346 defines the phrase -- or
14 adds -- or, according to that statute, the phrase, any
15 scheme or artifice to defraud includes a scheme or artifice
16 to deprive another of the intangible right of honest
17 services.

18 Now, in order to prove this charge, the Government
19 would have to prove the following elements in this crime,
20 each beyond a reasonable doubt, and they are: That you
21 knowingly devised or knowingly participated in a scheme or
22 artifice to defraud; that is, you knowingly devised or
23 knowingly participated in a scheme to deprive Arch Coal of
24 its intangible right of honest services of its employee by
25 means of materially false or fraudulent pretenses,

1 representations, omissions or promises, and that you did so
2 with the intent to defraud; and in advancing or furthering
3 your carrying out this scheme to defraud by means of
4 materially false or fraudulent pretenses, representations,
5 omissions or promises, you used the mail or caused the mail
6 to be used.

7 Now, I want to share with you some definitions that
8 apply to what I've just told you.

9 The phrase "any scheme or artifice to defraud" means
10 any deliberate plan of action or course of conduct by which
11 someone intends to deceive or to cheat another or by which
12 someone intends to deprive another of something of value.

13 In the context of the facts of this case, the phrase
14 "scheme or artifice to deprive another of the intangible
15 right of honest services" means that you as an employee of
16 Arch Coal, Inc., owed your employer a fiduciary duty of
17 loyalty; that you intended to breach that duty by failing to
18 disclose material matters; and that you foresaw or
19 reasonably should have foreseen that your employer might
20 suffer an economic harm as a result of the breach.

21 The phrase "false or fraudulent pretenses or
22 representations, omissions or promises" means a statement,
23 an assertion or omission which concerns a material or
24 important fact or a material or important aspect of the
25 matter in question.

1 A false representation or promise is one that was
2 either known to be untrue at the time that it was made or
3 used, or it was made or used with reckless indifference as
4 to whether it was, in fact, true or false, or made or used
5 with the intent to defraud.

6 An intent to defraud means to act knowingly and with
7 the intention or the purpose to deceive or cheat. An intent
8 to defraud is accompanied ordinarily by a desire or a
9 purpose to bring about some gain or benefit to oneself, or
10 some other person, or by a desire or purpose to cause some
11 loss to some person.

12 The use of the -- the phrase "use of the mails" means
13 that the mails were, in fact, used in some manner to further
14 or to advance or to carry out the scheme to defraud or
15 deprive Arch Coal of its intangible right of its employees
16 honest services.

17 An act is done knowingly if it's done voluntarily and
18 intentionally, and not by mistake, or accident, or other
19 innocent reason.

20 Any objection to the elements as I've described them?

21 MS. THOMAS: No, Your Honor. I would just ask
22 that the scheme to deprive Arch Coal of honest services has
23 to be attributed to bribery or kickbacks. I would add that.

24 THE COURT: All right. Under *Skilling*?

25 MS. THOMAS: Yes, Your Honor.

1 THE COURT: Yes.

2 MR. SMITH: I would agree with that, Your Honor.

3 THE COURT: You do?

4 MR. SMITH: Yes.

5 THE COURT: All right, very well.

6 BY THE COURT:

7 **Q.** Next, Mr. Lusk, I want to go over with you the maximum
8 and the minimum sentences you may face as a result of your
9 plea, and, that is, a maximum term of imprisonment of 20
10 years; a maximum fine of \$250,000, or twice the gross
11 pecuniary gain or loss resulting from your conduct,
12 whichever is greater; and a maximum term of supervised
13 release of three years. A mandatory special assessment of
14 \$100 will be required, and restitution could be ordered if
15 it were found to be applicable.

16 Next I want to return to our discussion to the federal
17 sentencing guidelines. They are advisory, meaning they're
18 not mandatory or don't have to be followed, but they'll
19 nevertheless play an important role in your case from here
20 on out.

21 This Court will consider the factors set forth in
22 18, U.S.C., Section 3553(a), including the advisory
23 guidelines, in determining the appropriate sentence in your
24 case. And I'll want to ask you some questions that will
25 help me to understand your understanding of the advisory

1 guidelines.

2 Have you discussed with your attorney the various
3 factors which apply in determining what the sentence in your
4 case may be under the advisory guidelines?

5 **A.** Yes, sir.

6 **Q.** And do you understand that under the single-count
7 Information, you cannot in any event receive a greater
8 sentence than the statutory maximum that I explained to you
9 a moment ago?

10 **A.** Yes, sir.

11 **Q.** Do you understand that the Court will not determine the
12 sentence for your case until a later date when a presentence
13 report has been completed and both you and the Government
14 have had an opportunity to challenge the facts and analysis
15 reported by the probation officer?

16 **A.** Yes, sir.

17 **Q.** Do you also understand that under a concept known as
18 relevant conduct, this Court, in determining the total
19 offense level for sentencing purposes under the guidelines,
20 may take into account any conduct, circumstances, or
21 injuries relevant to the crime of which you may be
22 convicted?

23 **A.** Yes, sir.

24 **Q.** Do you understand that after the Court has determined
25 what advisory guidelines apply to your case, the Court has

1 the authority to vary or depart from the advisory guidelines
2 and impose a sentence that is more severe or less severe
3 than the sentence called for by the guidelines?

4 **A.** Yes, sir.

5 **Q.** Do you understand, in determining your sentence, the
6 Court is obligated to calculate the applicable sentencing
7 guideline range and to consider that range, possible
8 departures under the guidelines, and other sentencing
9 factors under 18, U.S.C., Section 3553(a)?

10 **A.** Yes, sir.

11 **Q.** Do you understand that parole has been abolished, and
12 if you're sentenced to imprisonment, you will not be placed
13 on parole?

14 **A.** Yes, sir.

15 **Q.** Do you understand that if the Court accepts your plea
16 of guilty and the sentence ultimately imposed upon you is
17 more severe than you had hoped for or expected, you will
18 still be bound by your guilty plea and would have no right
19 to withdraw it?

20 **A.** Yes, sir.

21 **Q.** Do you understand that if you plead guilty to this
22 Information, which charges you with a felony, you may lose
23 important civil rights, such as the right to vote, the right
24 to serve on a jury, the right to hold public office, and the
25 right to own or possess a firearm?

1 **A.** Yes, sir.

2 **Q.** Mr. Lusk, you have the right to have this matter
3 presented to a federal grand jury, and I want to explain
4 that process to you at this time. A grand jury is composed
5 of at least 16 and not more than 23 persons. And at least
6 12 grand jurors must find that there's probable cause to
7 believe that you committed the crime of which you are
8 charged before you may be indicted.

9 Now, do you see any benefit to you of having this case
10 presented to a federal grand jury?

11 **A.** No, sir.

12 **Q.** Do you see any prejudice or disadvantage to you of not
13 having the case presented to a grand jury?

14 **A.** No, sir.

15 **Q.** All right. Your counsel has been provided with a
16 waiver of indictment form, and I want to go over that with
17 you now. It has the, what we call the style of the case,
18 the *United States of America versus Chadwick J. Lusk*, and
19 the Criminal Action Number.

20 And it's entitled: "Waiver of Indictment."

21 And it states as follows: "I, Chadwick J. Lusk, am
22 accused of violating 18, U.S.C., Sections 1341, 1346, and 2.
23 I have been advised of the nature of the charge of the
24 proposed Information and of my rights. I hereby waive in
25 open court prosecution by indictment and consent that the

1 proceedings may be by Information rather than by
2 indictment."

3 And there's a space for you to sign and date, a space
4 for your counsel to sign, and a space for me to sign.

5 Now, do you understand what I've just read to you?

6 **A.** Yes, sir.

7 **Q.** Anything about the waiver of indictment procedure that
8 you don't understand or that you have questions about?

9 **A.** No, sir.

10 **Q.** All right. If you're prepared to do so, then, I'll ask
11 that you execute the waiver of indictment form by signing it
12 and dating it, and I'll ask your counsel to sign it and
13 tender it to the Court.

14 MR. SMITH: May I approach, Your Honor?

15 THE COURT: You may.

16 MR. SMITH: I'm tendering the waiver to your
17 clerk, and also while here I have the special assessment
18 receipt.

19 THE COURT: Very well. We'll make the receipt a
20 part of the record. And I will also note that the defendant
21 has signed and dated the waiver of indictment form that has
22 been endorsed by his counsel. I am now signing it. And
23 I'll order that it be made a part of the record for this
24 proceeding.

25

1 BY THE COURT:

2 **Q.** Mr. Lusk, I now want to talk with you regarding your
3 trial and constitutional rights. You have the right to
4 plead not guilty and maintain a not guilty plea throughout
5 these proceedings, including at trial.

6 You have the right to be represented by counsel.

7 You have the right to a speedy and public trial by a
8 jury composed of citizens of this district.

9 You have the right to confront and have your attorney
10 cross-examine witnesses and have your attorney move to
11 suppress any evidence he believes was illegally or
12 unconstitutionally obtained.

13 You have the right not to testify or otherwise
14 incriminate yourself, and your exercise of this right cannot
15 be held against you.

16 Do you understand these rights so far?

17 **A.** Yes, sir.

18 **Q.** You have the right to have the Government come in here
19 and prove its case beyond a reasonable doubt.

20 The jury's verdict would have to be unanimous.

21 You have the right to present evidence on your own
22 behalf, and you have the right to testify on your own behalf
23 at trial.

24 And you have the right to subpoena witnesses to testify
25 for you.

1 Do you understand all of these rights?

2 **A.** Yes, sir.

3 **Q.** Any of them that you don't understand or have questions
4 about?

5 **A.** No, sir.

6 **Q.** Do you understand that other than your right to
7 counsel, that you'll be giving up all these rights by
8 entering a plea of guilty?

9 **A.** Yes, sir.

10 **Q.** Do you understand that once you've entered a plea of
11 guilty, there's not going to be any trial, no jury verdict,
12 and no findings of innocence or guilt based on disputed
13 evidence presented to me or to a jury?

14 **A.** Yes, sir.

15 **Q.** Do you believe that you fully understand the
16 consequences of entering a plea of guilty?

17 **A.** Yes, sir.

18 THE COURT: Mr. Smith, having reviewed this case
19 and the plea agreement in detail with your client, do you
20 believe that he fully understands his rights and fully
21 understands the consequences of entering a plea of guilty?

22 MR. SMITH: I do, Your Honor.

23 THE COURT: All right. Is there any objection to
24 the Court utilizing the Stipulation of Facts in its
25 consideration of the factual basis?

1 MS. THOMAS: No, Your Honor.

2 MR. SMITH: No, Your Honor.

3 THE COURT: All right. I looked at this and Ms.
4 Thomas and I discussed this a little bit last week. I think
5 going forward -- I don't need to deal with this today. I'm
6 prepared to move forward, but going forward, I think that we
7 need -- you're going to need to address the risk of economic
8 harm caused by this under the *Vineyard* case.

9 So we don't need to address that today, but that does
10 need to be addressed before I address the factual basis at
11 sentencing.

12 MS. THOMAS: I believe you asked for a September
13 15th deadline in the Mr. David Herndon matter. Would you
14 like the same for this matter?

15 THE COURT: If you're all right with that, I'm all
16 right with that. I don't want to put too many deadlines on
17 you personally all at once, so -- and this is a different
18 scheme.

19 MS. THOMAS: Yes.

20 THE COURT: So if you're all right with that, I'm
21 all right with that.

22 MS. THOMAS: I'm fine with that.

23 THE COURT: All right. Then we'll -- that's when
24 I will look for that.

25 And, Mr. Smith, you all can do that jointly, you can

1 file something separately; I'll leave that up to you all.
2 You all might be able to find that you're on the same page
3 about that.

4 MR. SMITH: Thank you, Your Honor.

5 THE COURT: All right.

6 All right, Mr. Lusk, will you please stand?

7 As to the charge contained in the single-count
8 Information, how do you plead, sir, guilty or not guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: And you may be seated.

11 Your counsel has been provided with a written plea of
12 guilty form. I would ask that you go over that with him as
13 necessary, sign and date it, and then I'll ask him to sign
14 it and tender it to the Court.

15 MR. SMITH: Your Honor, I have been over it with
16 him and both he and I have executed it and dated it.

17 THE COURT: All right.

18 MR. SMITH: May I approach?

19 THE COURT: You may. The defendant has signed and
20 dated the written plea of guilty form that has been
21 witnessed by his counsel, and I'll order that it be made a
22 part of the record for this proceeding.

23 BY THE COURT:

24 **Q.** Mr. Lusk, is this plea the result of any threat or
25 coercion or harassment of you by anyone?

1 **A.** No, sir.

2 **Q.** Is it the result of any promise or inducement other
3 than as contained in the plea agreement?

4 **A.** No, sir.

5 **Q.** Are you pleading guilty to protect anyone?

6 **A.** No, sir.

7 **Q.** Are you acting voluntarily and of your own free will in
8 entering this guilty plea?

9 **A.** Yes, sir.

10 **Q.** Has anyone promised or predicted the exact sentence
11 which will be imposed in your case?

12 **A.** No, sir.

13 **Q.** Do you understand that no one can know at this time the
14 exact sentence which will be imposed?

15 **A.** Yes, sir.

16 **Q.** Has your attorney adequately represented you in this
17 matter?

18 **A.** Yes, sir.

19 **Q.** Has your attorney left anything undone which you think
20 should have been done?

21 **A.** No, sir.

22 **Q.** Have you or your attorney found any defense to the
23 charge contained in the Information?

24 **A.** No, sir.

25 **Q.** Are you, in fact, guilty of the crime charged in the

1 Information; in other words, did you do it?

2 **A.** Yes, sir.

3 THE COURT: All right. I will find that the
4 defendant is competent and capable of entering an informed
5 plea; that the plea is freely and voluntarily made; that the
6 defendant understands the nature of the charge and is aware
7 of the consequences of the plea.

8 I will find that the defendant understands his rights
9 and understands that he's giving up these rights by entering
10 a plea of guilty. I will find -- I will defer a factual
11 basis finding, but I will accept the plea of guilty to the
12 Information. And I will defer adjudging the defendant
13 guilty until the time of sentencing.

14 I will ask the probation officer to prepare a
15 presentence investigation report.

16 Mr. Lusk, it's important that you cooperate fully with
17 the probation officer in the preparation of the presentence
18 report. If you fail to cooperate fully and truthfully with
19 the probation officer, you may be subject to an enhancement
20 of your sentence, or the forfeiture of certain sentence
21 reductions for which you might otherwise be eligible.

22 It's also important that you not commit any additional
23 crimes between now and sentencing, as there may be
24 additional punishments imposed for committing additional
25 crimes.

1 I'm going to set this matter for sentencing on October
2 29, 2014, at 1:30 p.m. I will put the other presentence
3 dates in my post-plea Order.

4 Ms. Thomas, what's the Government's position with
5 regard to bond?

6 MS. THOMAS: The United States has no objections
7 to his release on bond.

8 THE COURT: All right. I will permit the
9 defendant to be released on a \$10,000 unsecured bond today
10 under the standard conditions. I'm going to go ahead now
11 and sign my part of that paperwork.

12 And, Mr. Smith, you and your client just need to
13 complete the paperwork with my Courtroom Deputy after the
14 hearing concludes.

15 MR. SMITH: Yes, Your Honor.

16 THE COURT: And one thing, one thing, if you --
17 Mr. Lusk, if you have firearms, you're going to have to get
18 rid of them; get them into the possession of someone else as
19 a part of the bond conditions. And I think you need to
20 surrender your passport, if you haven't already done so.

21 THE DEFENDANT: Okay, yes, sir.

22 THE COURT: All right. Anything else we need to
23 take up today?

24 MS. THOMAS: No, Your Honor.

25 MR. SMITH: No, Your Honor.

1 THE COURT: All right. Thank you.

2 THE CLERK: All rise. This Court is in recess.

3 (Proceedings concluded at 11:07 a.m.)

4

5 CERTIFICATE OF OFFICIAL REPORTER

6 I, Catherine L. Schutte-Stant, Federal Official Court
7 Reporter, in and for the United States District Court, for
8 the Southern District of West Virginia, do hereby certify
9 that the foregoing is a true and correct transcript of the
10 stenographically reported proceedings held in the
11 above-entitled matter.

12

13 Dated this 4th day of September 2014.

14

15

16 /s/ CATHERINE L. SCHUTTE-STANT, RPR,RMR

17 CATHERINE L. SCHUTTE-STANT, RPR,RMR
18 FEDERAL OFFICIAL COURT REPORTER

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